

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF OHIO
4 EASTERN DIVISION

5 Caroline Veras,

6 Plaintiff,

7 vs.

8 Wireless PCS Ohio #1, LLC; Wireless PCS
9 Ohio #2, LLC; Wireless PCS Ohio #3, LLC;
10 Wireless PCS Ohio #4, LLC; Wireless PCS
11 Ohio #5, Inc.; Wireless PCS Ohio #6, Inc.; and
12 Tommy Kinaia,

13 Defendants.

No. _____

COMPLAINT

14 Plaintiff, Caroline Veras ("Plaintiff"), individually, and by and through the undersigned
15 attorneys, sues the Defendants, Wireless PCS Ohio #1, LLC, Wireless PCS Ohio #2, LLC,
16 Wireless PCS Ohio #3, LLC, Wireless PCS Ohio #4, LLC, Wireless PCS Ohio #5, Inc., Wireless
17 PCS Ohio #6, Inc. and Tommy Kinaia ("Defendant Kinaia") (collectively "Defendants") and
18 alleges as follows:

19 **PARTIES**

20 1. At all material times, Plaintiff is an individual residing in Cuyahoga County,
21 Ohio.

22 2. At all material times, Defendant Wireless PCS Ohio #1, LLC was a corporation
23 duly licensed to transact business in the State of Ohio. Defendant Wireless PCS Ohio #1, LLC
24 does business, has offices, and/or maintains agents for the transaction of its customary business
25 in Cuyahoga County, Ohio.
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1 3. At all relevant times, Plaintiff was an employee of Defendant Wireless PCS Ohio
2 #1, LLC, as defined by the Fair Labor Standards Act (“FLSA”). At all relevant times, Defendant
3 Wireless PCS Ohio #1, LLC, acting through its agents, representatives, employees, managers,
4 members, and/or other representatives had the authority to hire and fire employees, supervised
5 and controlled work schedules or the conditions of employment, determined the rate and method
6 of payment, and maintained employment records in connection with Plaintiff’s Employment with
7 Defendant Wireless PCS Ohio #1, LLC. In any event, at all relevant times, Defendant Wireless
8 PCS Ohio #1, LLC was an employer as defined by the FLSA and employed Plaintiff.
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10 4. At all material times, Defendant Wireless PCS Ohio #2, LLC was a corporation
11 duly licensed to transact business in the State of Ohio. Defendant Wireless PCS Ohio #2, LLC
12 does business, has offices, and/or maintains agents for the transaction of its customary business
13 in Cuyahoga County, Ohio.
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15 5. At all relevant times, Plaintiff was an employee of Defendant Wireless PCS Ohio
16 #2, LLC, as defined by the Fair Labor Standards Act (“FLSA”). At all relevant times, Defendant
17 Wireless PCS Ohio #2, LLC, acting through its agents, representatives, employees, managers,
18 members, and/or other representatives had the authority to hire and fire employees, supervised
19 and controlled work schedules or the conditions of employment, determined the rate and method
20 of payment, and maintained employment records in connection with Plaintiff’s Employment with
21 Defendant Wireless PCS Ohio #2, LLC. In any event, at all relevant times, Defendant Wireless
22 PCS Ohio #2, LLC was an employer as defined by the FLSA and employed Plaintiff.
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24 6. At all material times, Defendant Wireless PCS Ohio #3, LLC was a corporation
25 duly licensed to transact business in the State of Ohio. Defendant Wireless PCS Ohio #3, LLC
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1 does business, has offices, and/or maintains agents for the transaction of its customary business
2 in Cuyahoga County, Ohio.

3 7. At all relevant times, Plaintiff was an employee of Defendant Wireless PCS Ohio
4 #3, LLC, as defined by the FLSA. At all relevant times, Defendant Wireless PCS Ohio #3, LLC,
5 acting through its agents, representatives, employees, managers, members, and/or other
6 representatives had the authority to hire and fire employees, supervised and controlled work
7 schedules or the conditions of employment, determined the rate and method of payment, and
8 maintained employment records in connection with Plaintiff's Employment with Defendant
9 Wireless PCS Ohio #3, LLC. In any event, at all relevant times, Defendant Wireless PCS Ohio
10 #3, LLC was an employer as defined by the FLSA and employed Plaintiff.

12 8. At all material times, Defendant Wireless PCS Ohio #4, LLC was a corporation
13 duly licensed to transact business in the State of Ohio. Defendant Wireless PCS Ohio #4, LLC
14 does business, has offices, and/or maintains agents for the transaction of its customary business
15 in Cuyahoga County, Ohio.

17 9. At all relevant times, Plaintiff was an employee of Defendant Wireless PCS Ohio
18 #4, LLC as defined by the FLSA. At all relevant times, Defendant Wireless PCS Ohio #4, LLC,
19 acting through its agents, representatives, employees, managers, members, and/or other
20 representatives had the authority to hire and fire employees, supervised and controlled work
21 schedules or the conditions of employment, determined the rate and method of payment, and
22 maintained employment records in connection with Plaintiff's Employment with Defendant
23 Wireless PCS Ohio #4, LLC. In any event, at all relevant times, Defendant Wireless PCS Ohio
24 #4, LLC was an employer as defined by the FLSA and employed Plaintiff.

1 10. At all material times, Defendant Wireless PCS Ohio #5, Inc. was a corporation
2 duly licensed to transact business in the State of Ohio. Defendant Wireless PCS Ohio #5, Inc.
3 does business, has offices, and/or maintains agents for the transaction of its customary business
4 in Wayne County, Ohio.

5 11. At all relevant times, Plaintiff was an employee of Defendant Wireless PCS Ohio
6 #5, Inc. as defined by the FLSA. At all relevant times, Defendant Wireless PCS Ohio #5, Inc.,
7 acting through its agents, representatives, employees, managers, members, and/or other
8 representatives had the authority to hire and fire employees, supervised and controlled work
9 schedules or the conditions of employment, determined the rate and method of payment, and
10 maintained employment records in connection with Plaintiff's Employment with Defendant
11 Wireless PCS Ohio #5, Inc. In any event, at all relevant times, Defendant Wireless PCS Ohio #5,
12 Inc. was an employer as defined by the FLSA and employed Plaintiff.

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14 12. At all material times, Defendant Wireless PCS Ohio #6, Inc. was a corporation
15 duly licensed to transact business in the State of Ohio. Defendant Wireless PCS Ohio #6, Inc.
16 does business, has offices, and/or maintains agents for the transaction of its customary business
17 in Cuyahoga County, Ohio.

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19 13. At all relevant times, Plaintiff was an employee of Defendant Wireless PCS Ohio
20 #6, Inc. as defined by the FLSA. At all relevant times, Defendant Wireless PCS Ohio #6, Inc.,
21 acting through its agents, representatives, employees, managers, members, and/or other
22 representatives had the authority to hire and fire employees, supervised and controlled work
23 schedules or the conditions of employment, determined the rate and method of payment, and
24 maintained employment records in connection with Plaintiff's Employment with Defendant
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1 Wireless PCS Ohio #6, Inc. In any event, at all relevant times, Defendant Wireless PCS Ohio #6,
2 Inc. was an employer as defined by the FLSA and employed Plaintiff.

3 14. At all relevant times, Plaintiff was an employee of Defendant Kinaia as defined
4 by the FLSA. Defendant Kinaia owns, operates as a manager of, operates as a member of, and/or
5 possesses a similar interest in Defendant Wireless PCS Ohio #1, LLC, Defendant Wireless PCS
6 Ohio #2, LLC, Defendant Wireless PCS Ohio #3, LLC, Defendant Wireless PCS #4, LLC,
7 Defendant Wireless PCS #5, Inc., and Defendant Wireless PCS #6, Inc. At all relevant times,
8 Defendant Kinaia had the authority to hire and fire employees, supervised and controlled work
9 schedules or the conditions of employment, determined the rate and method of payment, and
10 maintained employment records in connection with Plaintiff's Employment with Defendant
11 Wireless PCS Ohio #1, LLC, Defendant Wireless PCS Ohio #2, LLC, Defendant Wireless PCS
12 Ohio #3, LLC, Defendant Wireless PCS Ohio #4, LLC, Defendant Wireless PCS Ohio #5, Inc.,
13 and Defendant Wireless PCS Ohio #6, Inc. In any event, at all relevant times, Defendant Kinaia
14 was an employer as Defined by the FLSA and employed Plaintiff.
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16 15. Upon information and belief, Defendants were and continue to be residents of
17 and/or regularly transact business within Cuyahoga County, Ohio.
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19 16. At all relevant times, Plaintiff was an "employee" of Defendant Wireless PCS
20 Ohio #1, LLC, Defendant Wireless PCS Ohio #2, LLC, Defendant Wireless PCS Ohio #3, LLC,
21 Defendant Wireless PCS Ohio #4, LLC, Defendant Wireless PCS Ohio #5, Inc., and Defendant
22 Wireless PCS Ohio #6, Inc., and Defendant Kinaia as defined by the FLSA, 29 U.S.C. §
23 203(e)(1).
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25 17. The provisions set forth in 29 U.S.C. § 207 of the FLSA apply to Defendant
26 Wireless PCS Ohio #1, LLC, Defendant Wireless PCS Ohio #2, LLC, Defendant Wireless PCS
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1 Ohio #3, LLC, Defendant Wireless PCS Ohio #4, LLC, Defendant Wireless PCS Ohio #5, Inc.,
2 and Defendant Wireless PCS Ohio #6, Inc., and Defendant Kinaia.

3 18. At all relevant times, Defendant Wireless PCS Ohio #1, LLC, Defendant Wireless
4 PCS Ohio #2, LLC, Defendant Wireless PCS Ohio #3, LLC, Defendant Wireless PCS Ohio #4,
5 LLC, Defendant Wireless PCS Ohio #5, Inc., and Defendant Wireless PCS Ohio #6, Inc. and
6 Defendant Kinaia were and continue to be employers as defined by the FLSA, 29 U.S.C. §
7 203(d).
8

9 19. Defendants individually and/or through an enterprise or agent, directed and
10 exercised control over Plaintiff's work and wages at all relevant times.

11 20. Plaintiff, in her work for Defendants, was employed by an enterprise engaged in
12 commerce that had annual gross sales of at least \$500,000.

13 **JURISDICTION AND VENUE**

14 21. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29
15 U.S.C. § 201, *et seq.*
16

17 22. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(ii) because acts
18 giving rise to the claims of the Plaintiff occurred within this judicial district, and Defendants
19 regularly conduct business in and have engaged in the wrongful conduct alleged herein – and,
20 thus, are subject to personal jurisdiction in – this judicial district.

21 **BACKGROUND**

22 23. The FLSA was enacted “to protect all covered workers from substandard wages
23 and oppressive working hours.” Barrentine v. Ark Best Freight Sys. Inc., 450 U.S. 728, 739
24 (1981). Under the FLSA, employers must pay their employees one and one half times their
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1 regular rate of pay for all time worked in excess of 40 hours in a regular workweek. See 29
2 U.S.C. § 207(a).

3 **NATURE OF THE CLAIM**

4 24. Defendants own and/or operate Defendant Wireless PCS Ohio #1, LLC,
5 Defendant Wireless PCS Ohio #2, LLC, Defendant Wireless PCS Ohio #3, LLC, Defendant
6 Wireless PCS Ohio #4, LLC, and Defendant Wireless PCS Ohio #6, Inc., which are each
7 enterprises located in Cuyahoga County, Ohio. Defendants own and/or operate Defendant
8 Wireless PCS Ohio #5, Inc., which is an enterprise located in Wayne County, Ohio.
9

10 25. Plaintiff was employed by Defendants from approximately September 1, 2014
11 through approximately December 31, 2017 as a sales and customer service representative. At all
12 times during his employment with Defendants, Plaintiff was not exempt from the FLSA's
13 overtime requirements.

14 26. From the beginning of Plaintiff's employment with Defendants through
15 approximately January 1, 2017 ("the 1099 period"), Defendants improperly classified Plaintiff as
16 an independent contractor. However, at all times, Plaintiff was an employee of Defendants.
17

18 27. From approximately January 1, 2017 through the end of her employment,
19 Defendants changed Plaintiff's classification to employee, despite continuing to perform the
20 same job duties.

21 28. During each and every workweek during which Defendants employed Plaintiff
22 during the 1099 period, Plaintiff was paid a single hourly rate, regardless of the number of hours
23 that Plaintiff worked for Defendants.
24

25 29. For the duration of Plaintiff's employment with Defendants during the 1099
26 period, Defendants had a consistent policy and practice of requiring Plaintiff to work well in
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1 excess of forty (40) hours per week without paying her one and one-half times her regular rate of
2 pay for all hours worked in excess of forty (40) hours per week.

3 30. In a given workweek, and during each and every workweek during which Plaintiff
4 worked for Defendants during the 1099 period, Plaintiff worked in excess of 40 hours without
5 being compensated one and one-half times her regular rate of pay.

6 31. While employed by Defendants, Plaintiff worked between 50 and 60 hours per
7 week.

8 32. During the 1099 period, Plaintiff was compensated at a flat hourly rate for all
9 hours worked in a given workweek, regardless of the amount of hours Plaintiff worked in a given
10 workweek, even when Plaintiff worked in excess of 40 hours in a given workweek, and for all
11 hours Plaintiff worked in excess of 40 hours in a given workweek.

12 33. Defendants hired/fired, issued pay, supervised, directed, disciplined, scheduled,
13 and performed all other duties generally associated with that of an employer with regard to
14 Plaintiff.

15 34. Defendants instructed Plaintiff about when, where, and how to perform her work.

16 35. Defendants controlled Plaintiffs schedule.

17 36. Defendants prohibited Plaintiff from working for any other wireless company.

18 37. The following further demonstrate that Plaintiff was an employee.

19 a. Defendants had the sole right to hire and fire Plaintiff;

20 b. Defendants required Plaintiff to complete an employee application and
21 participate in an interview as a prerequisite to his employment;

22 c. Defendants made the decision not to pay overtime;

- 1 d. Defendants supervised Plaintiff and subjected Plaintiff to Defendants’
2 rules;
3 e. Plaintiff had no financial investment with Defendants’ business;
4 f. Plaintiff had no opportunity for profit or loss in the business;
5 g. The services rendered by Plaintiff in her work for Defendants was integral
6 to Defendants’ business;
7 h. Plaintiff was hired as a permanent employee for an indefinite duration,
8 working for Defendants for more than three years.
9

10 38. During the 1099 period, Defendants classified Plaintiff as an independent
11 contractor to avoid Defendants’ obligation to pay Plaintiff one and one-half times her regular rate
12 of pay for all hours worked in excess of 40 hours per week.

13 39. As a result of Defendants’ failure to pay one and one-half times her regular rate of
14 pay to Plaintiff for hours worked over forty (40) hours per week, Defendants violated 29 U.S.C.
15 § 207(a).
16

17 **FACTUAL BACKGROUND**

18 40. Defendants hired Plaintiff on or about September 1, 2014 as a sales and customer
19 service representative.

20 41. Defendants' employment of Plaintiff concluded on or about December 31, 2017.

21 42. Plaintiff was a non-exempt employee.

22 43. Plaintiff did not have supervisory authority over any employees, did not possess
23 the authority to hire or fire employees, did not possess authority to make critical job decisions
24 with respect to any of Defendants’ employees, did not direct the work of two or more employees,
25 and did not exercise discretion and independent judgment with respect to matters of significance.
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1 44. Plaintiff's primary duty was not the management of the enterprise in which she
2 was employed or any recognized department of the enterprise.

3 45. During the 1099 period, Defendants failed to properly compensate Plaintiff for
4 any of her overtime hours. During this time, Plaintiff worked approximately fifty (50) to sixty
5 (60) hours per week.

6 46. Defendants knew that – or acted with reckless disregard as to whether – their
7 refusal or failure to properly compensate Plaintiff during the 1099 period would violate federal
8 and state law, and Defendants were aware of the FLSA minimum wage and overtime
9 requirements during Plaintiff's employment. As such, Defendants' conduct constitutes a willful
10 violation of the FLSA.
11

12 47. Defendants refused and/or failed to properly disclose to or apprise Plaintiff of her
13 rights under the FLSA.
14

15 **COUNT ONE: FAIR LABOR STANDARDS ACT**
16 **FAILURE AND/OR REFUSAL TO PAY OVERTIME**

17 48. Plaintiff realleges and incorporates by reference all allegations in all preceding
18 paragraphs.
19

20 49. In a given workweek, and during each and every workweek, during the 1099
21 period, Plaintiff regularly and consistently worked approximately ten (10) to twenty (20) hours
22 of overtime per week, and Defendants did not pay Plaintiff one and one-half times her regular
23 rate of pay for such time worked.

24 50. For example, and upon information and belief, during the workweek of June 6,
25 2016, Plaintiff was scheduled, and worked, for more than 40 hours. Defendants failed and/or
26 refused to compensate Plaintiff at one and one-half times her regular rate of pay for all time she
27 worked in excess of forty (40) hours.

1 51. As a result, Defendants have intentionally failed and/or refused to pay Plaintiff
2 overtime according to the provisions of the FLSA.

3 52. Defendants further have engaged in a widespread pattern and practice of violating
4 the provisions of the FLSA by failing to pay Plaintiff in accordance with 29 U.S.C. § 207.

5 53. Although at this stage, Plaintiff is unable to state the exact amount owed for all
6 time worked during the course of her employment, Plaintiff believes that such information will
7 become available during the course of discovery. Furthermore, when an employer fails to keep
8 complete and accurate time records, employees may establish the hours worked by their
9 testimony, and the burden of overcoming such testimony shifts to the employer.
10

11 54. Defendants knew that – or acted with reckless disregard as to whether – their
12 refusal or failure to properly compensate Plaintiff over the course of her employment would
13 violate federal and state law, and Defendants were aware of the FLSA minimum wage
14 requirements during Plaintiff’s employment. As such, Defendants’ conduct constitutes a willful
15 violation of the FLSA.
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17 55. Defendants have and continue to willfully violate the FLSA by not paying
18 Plaintiff a wage equal to one and one-half times Plaintiff’s regular rate of pay for all time spent
19 performing labor for Defendants in excess of her regular 40-hour workweek during the 1099
20 period.
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22 56. As a result of Defendants failure or refusal to pay Plaintiff a wage equal to one
23 and one-half times Plaintiff’s regular rate of pay for work Plaintiff performed for Defendants in
24 excess of her regular 40-hour workweek, Defendants violated 29 U.S.C. § 207(a). Plaintiff is
25 therefore entitled to compensation of one and one-half times her regular rate of pay, to be proven
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1 at trial, plus an additional equal amount as liquidated damages, together with interest, reasonable
2 attorney's fees, and costs.

3 57. **WHEREFORE**, Plaintiff, Caroline Veras, individually, requests that this Court
4 enter Judgment against Defendants, Wireless PCS Ohio #1, LLC, Wireless PCS Ohio #2, LLC,
5 Wireless PCS Ohio #3, LLC, Wireless PCS Ohio #4, LLC, Wireless PCS Ohio #5, Inc., Wireless
6 PCS Ohio #6, Inc., and Tommy Kinaia, in her favor:

- 7
- 8 a. Awarding Plaintiff overtime compensation in the amount due to her for all of
9 Plaintiff's time worked in excess of forty (40) hours per work week at an amount
10 equal to one and one-half times Plaintiff's regular rate of pay while working at
11 Wireless PCS Ohio #1, LLC, Wireless PCS Ohio #2, LLC, Wireless PCS Ohio
12 #3, LLC, Wireless PCS Ohio #4, LLC, Wireless PCS Ohio #5, Inc., and Wireless
13 PCS Ohio #6, Inc.
- 14 b. Awarding Plaintiff liquidated damages in an amount equal to the overtime award;
- 15 c. Awarding Plaintiff reasonable attorneys' fees and costs and expenses of the
16 litigation pursuant to 29 U.S.C. § 216(b);
- 17 d. Awarding Plaintiff pre-judgment interest, at the highest legal rate, on all amounts
18 set forth in subsections (a) and (b) above from the date of the payment due for that
19 pay period until paid in full;
- 20 e. Awarding Plaintiff post-judgment interest, at the highest legal rate, on all amounts
21 from the date of such award until paid in full;
- 22 f. For such other and further relief as the Court deems just and proper.
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26 RESPECTFULLY SUBMITTED this 12th Day of February, 2018.
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